

1 WAYNE STRUMPFER  
 Acting California Corporations Commissioner  
 2 ALAN S. WEINGER (CA BAR NO. 86717)  
 Acting Deputy Commissioner  
 3 JUDY L. HARTLEY (CA BAR NO. 110628)  
 Senior Corporations Counsel  
 4 Department of Corporations  
 320 West 4<sup>th</sup> Street, Ste. 750  
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 6  
 Attorneys for Complainant  
 7

8 BEFORE THE DEPARTMENT OF CORPORATIONS  
 9 OF THE STATE OF CALIFORNIA  
 10

|   |   |                           |
|---|---|---------------------------|
| 11 In the Matter of the Accusation/Statement of | ) | OAH CASE NO. L-2005100334 |
| Issues of THE CALIFORNIA                        | ) |                           |
| 12 CORPORATIONS COMMISSIONER,                   | ) | File No.: 963-1996        |
|   | ) |                           |
| 13 Complainant,                                 | ) | SETTLEMENT AGREEMENT      |
|   | ) |                           |
| 14 vs.  | ) |                           |
|   | ) |                           |
| 16 VINEYARD ESCROW and TIMOTHY RORY             | ) |                           |
| DELANEY,  | ) |                           |
|   | ) |                           |
| 17 Respondents.                                 | ) |                           |

18  
 19 This Settlement Agreement is entered into between Vineyard Escrow (“Vineyard”) and  
 20 Timothy Rory Delaney (“Delaney”), on the one hand, and the California Corporations  
 21 Commissioner ("Commissioner"), on the other hand, and is made with respect to the following facts:  
 22

23 **RECITALS**

24 A. Vineyard, a California corporation, currently holds escrow agent’s license number  
 25 963-1996 with a main office located at 27727 Jefferson Avenue, Temecula, California 92590 and a  
 26 branch office located at 3349 W. Florida Avenue, Hemet, California 92590. Vineyard has been  
 27 licensed by the Commissioner pursuant to the California Escrow Law since March 27, 2003.  
 28

1 B. Delaney is, and was at all times relevant herein, the president, sole shareholder and a  
2 director of Vineyard.

3 C. On October 3, 2005, Vineyard and Delaney were personally served with a Notice of  
4 Intention to (1) Issue Order Revoking Escrow Agent's Licenses; (2) to Issue Order Denying  
5 Application for an Escrow Agent's Branch License; and (3) to Issue Order Pursuant to California  
6 Financial Code Section 17423 (Bar From Employment, Management or Control of Any Escrow  
7 Agent), Accusation/Statement of Issues and accompanying documents issued by the Commissioner  
8 on September 21, 2005 ("Accusation"). Vineyard and Delaney have filed Notices of Defense with  
9 the Commissioner. A three-day hearing is currently scheduled to commence on March 27, 2006.

10 D. It is the intention and desire of the parties to resolve this matter without the necessity  
11 of a hearing and/or other litigation.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. This Settlement Agreement is entered into for the purpose of judicial economy and  
16 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

17 2. Vineyard and Delaney admit the allegations contained in the Accusation. The  
18 admissions of Vineyard and Delaney are solely for the limited purposes of these proceedings and  
19 any future proceeding(s) that may be initiated by or brought before the Commissioner against  
20 Vineyard and Delaney. It is the intent and understanding between the parties that this Settlement  
21 Agreement, and particularly the admissions of Vineyard and Delaney herein, shall not be binding or  
22 admissible against Vineyard and/or Delaney in any action(s) brought against Vineyard and/or  
23 Delaney by third parties.

24 3. Delaney hereby agrees to the issuance by the Commissioner of an order barring  
25 Delaney from any position of employment, management or control of any escrow agent for a period  
26 of one year. The Bar Order shall become effective upon the completion and approval of the change  
27 of ownership and control of Vineyard stock described in paragraph 9 below (hereinafter "change of  
28 ownership and control"). A copy of the Bar Order is attached hereto as Exhibit A and incorporated

1 by reference.

2 4. Delaney acknowledges that while the Bar Order is in effect, the provisions of  
3 California Financial Code section 17423 require, in addition to relinquishing his ownership in  
4 Vineyard as provided for in paragraph 9 below, that he resign all positions of employment,  
5 management and control of Vineyard, including officer, director, and managerial positions, and that  
6 he will be prohibited from influencing or acting on behalf of Vineyard in any manner whatsoever, to  
7 include signing on any Vineyard bank accounts, including trust and general bank accounts.

8 5. Delaney acknowledges his right to an administrative hearing under California  
9 Financial Code section 17423 in connection with the bar and hereby waives his right to a hearing,  
10 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow  
11 Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any  
12 other provision of law in connection with the bar.

13 6. The Commissioner agrees to allow Vineyard to withdraw its application for an  
14 escrow agent's branch license for 29955 Technology Drive, Murrieta, California 92563; file No.  
15 863-1461 ("application"), and Vineyard agrees to withdraw its application immediately upon  
16 completion and approval of the change of ownership and control.

17 7. Vineyard agrees that it shall not apply for any further escrow agent's branch licenses  
18 until after a one-year period from the date Delaney has completed his bar. The Commissioner agrees  
19 to consider any further escrow agent's branch license application(s) from Vineyard in the normal and  
20 ordinary course of business, provided that no further actions are commenced under and/or violations  
21 of the Escrow Law have occurred. The provisions of this paragraph shall not apply in the event  
22 Vineyard is sold and the new owner(s) and management are unrelated and/or unaffiliated with  
23 Delaney in any manner.

24 8. The parties further agree that this Settlement Agreement shall have the effect of  
25 dismissing that portion of the Notice of Intention relating to the revocation of Vineyard's existing  
26 escrow agent's licenses. The dismissal shall become effective upon the completion and approval of  
27 the change of ownership and control. This dismissal shall have no effect on the validity of  
28 Vineyard's admissions herein.

1           9.       The parties hereby agree that Delaney shall relinquish his ownership in Vineyard by  
2 placing his stock into an irrevocable trust ("the trust") in the form attached hereto as Exhibit B with  
3 Michiko Shimbo as trustee. Delaney acknowledges that the trust constitutes a change of ownership  
4 and control that must be approved by the Commissioner pursuant to California Financial Code  
5 Section 17213 through the filing of an Application for Change of Ownership. Delaney agrees that  
6 the change of ownership and control must be completed by May 31, 2006.

7           10.      The Commissioner hereby agrees to process any Application for Change of  
8 Ownership filed with the Commissioner pursuant to the contemplated transfer of stock described in  
9 paragraph 9 above in an expeditious manner, which shall include prompt notice of any deficiency in  
10 the completeness of the application or of any potential problems with the applicant(s). Delaney  
11 agrees that in the event that the Commissioner abandons or denies the application(s) described in  
12 paragraph 9 above, as provided by the Escrow Law, and the time set forth in paragraph 9 above has  
13 passed, this Settlement Agreement shall become null and void and this entire matter shall be reset for  
14 hearing.

15          11.      The Commissioner agrees that, during the bar period, Michiko Shimbo, upon  
16 completion by the Commissioner of her background check without incident, may serve as the  
17 president and a director of Vineyard. The Commissioner does not object to Michiko Shimbo  
18 occupying other corporate positions during the bar period.

19          12.      The Commissioner shall cause this Settlement Agreement to be filed with the Office  
20 of Administrative Hearings within five business days of its execution.

21          13.      The parties hereby acknowledge and agree that this Settlement Agreement is intended  
22 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and  
23 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's  
24 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,  
25 civil or criminal, brought by any such agency against Vineyard and/or Delaney based upon any of  
26 the activities alleged in this matter or otherwise.

27          14.      Each of the parties represents, warrants, and agrees that it has received independent  
28 advice from its attorney(s) and/or representatives with respect to the advisability of executing this

1 Settlement Agreement.

2       15. Each of the parties represents, warrants, and agrees that in executing this Settlement  
3 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel  
4 and/or representative. Each of the parties further represents, warrants, and agrees that in executing  
5 this Settlement Agreement it has placed no reliance on any statement, representation, or promise of  
6 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any  
7 party or any other person or entity to make any statement, representation or disclosure of anything  
8 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in  
9 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the  
10 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this  
11 Settlement Agreement.

12       16. This Settlement Agreement is the final written expression and the complete and  
13 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
14 between the parties with respect to the subject matter hereof, and supercedes all prior or  
15 contemporaneous agreements, negotiations, representations, understandings, and discussions  
16 between and among the parties, their respective representatives, and any other person or entity, with  
17 respect to the subject matter covered hereby.

18       17. In that the parties have had the opportunity to draft, review and edit the language of  
19 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any  
20 part of this Settlement Agreement will be applied in any action relating to, connected, to, or  
21 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil  
22 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,  
23 language of a contract should be interpreted most strongly against the party who caused the  
24 uncertainty to exist.

25       18. This Settlement Agreement may be executed in one or more counterparts, each of  
26 which shall be an original but all of which, together, shall be deemed to constitute a single  
27 document.  
28

1           19. Each signator hereto covenants that he/she possesses all necessary capacity and  
2 authority to sign and enter into this Settlement Agreement.

3 Dated: 03/24/06                      WAYNE STRUMPFER  
4    Acting California Corporations Commissioner

5 By \_\_\_\_\_  
6    ALAN S. WEINGER  
7    Acting Deputy Commissioner

8 Dated: \_\_\_\_\_                      VINEYARD ESCROW

9  
10 By \_\_\_\_\_  
11    TIMOTHY RORY DELANEY, President

12  
13 Dated: \_\_\_\_\_                      By \_\_\_\_\_  
14    TIMOTHY RORY DELANEY, an individual

15 APPROVED AS TO FORM AND CONTENT:

16 DAVIS & DAVIS

17  
18 By \_\_\_\_\_  
19 M. STEPHEN DAVIS, Attorneys for  
20 VINEYARD ESCROW and TIMOTHY RORY DELANEY

21 WAYNE STRUMPFER  
22 Acting California Corporations Commissioner

23  
24 By \_\_\_\_\_  
25 JUDY L. HARTLEY  
26 Senior Corporations Counsel  
27  
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